



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

WC Docket No. 13-39; FCC 13-135

Rural Call Completion

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document the FCC seeks comments on additional measures that may help the Commission ensure a reasonable and nondiscriminatory level of service for completing long-distance calls to rural areas. This document also; seeks to improve the Commission's ability to monitor problems with completing calls to rural areas, and enhance our ability to enforce restrictions against blocking, choking, reducing, or restricting calls. The Further Notice of Proposed Rulemaking seeks public comment on additional measures intended to further ensure reasonable and nondiscriminatory service to rural areas, including additional reforms pertaining to autodialer traffic, intermediate providers, and on other Safe Harbor options and reporting requirements.

DATES: Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and reply comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by WC Docket No. 13-39, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for

submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **WC Docket No. 13-39**.

- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, or via email to fcc@bcpiweb.com.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Gregory D. Kwan, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1191.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 13-39, FCC 13-135, released on November 8, 2013. The complete text of this document is available for public inspection during

regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. It is also available on the Commission's Web site at <http://www.fcc.gov>. This summarizes only the FPRM in WC Docket No. 13-39; A summary of the Commission's Report and Order in WC Docket No. 13-39 is published elsewhere in this issue of the Federal Register.

Synopsis of Further Notice of Proposed Rulemaking

I. INTRODUCTION

1. In the Report and Order in WC Docket No. 13-39 (published elsewhere in this issue of the Federal Register), we adopt rules to address significant concerns about completion of long-distance calls to rural areas. Doing so will help ensure that long-distance calls to all Americans, including rural Americans, are completed. The record in this proceeding leaves no doubt that completion rates for long-distance calls to rural areas are frequently poor—whether the call is significantly delayed, the called party's phone never rings, the caller hears false busy signals, or there are other problems. These failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas.

2. The rules adopted in the Report and Order are a critical step to eliminating this significant problem by improving the Commission's ability to monitor the delivery of long-distance calls to rural areas, aiding enforcement action in connection with providers' call completion practices as necessary, as well as aiding consumers and industry by adopting a rule prohibiting false ring signaling. In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on additional measures that may help the Commission ensure a reasonable and

nondiscriminatory level of service to rural areas.

II. BACKGROUND

3. The Commission initiated this rulemaking in February 2013 to help address problems in the completion of long-distance telephone calls to rural customers. This followed a series of Commission actions to address rural call completion concerns over the past several years. As discussed in greater detail below, since 2007 the Commission has:

- Adopted the USF/ICC Transformation Order, which, among other things, reaffirmed the prohibition on call blocking; made clear that carriers' blocking of VoIP-PSTN traffic is prohibited; clarified that interconnected and one-way VoIP providers are prohibited from blocking voice traffic to or from the PSTN; and adjusted over a period of time many terminating switched access charges as part of transition to a bill-and-keep regime;
- Issued two Declaratory Rulings clarifying that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges, and clarifying the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic which may violate section 201 or 202 of the Communications Act of 1934, as amended (the Act);
- Established a Rural Call Completion Task Force to investigate the growing problems associated with calls to rural customers;
- Held a workshop to identify specific causes of rural call completion problems and discuss potential solutions with key stakeholders;

- Established dedicated avenues for rural consumers and carriers to inform the Commission about call completion problems; and
- Investigated and pursued enforcement of providers not complying with the statute and/or our rules, including a consent decree as well as an enforcement advisory regarding rural call completion problems.

We describe in greater detail the Commission's most significant actions, which inform the legal and policy actions that we take in this Order.

4. USF/ICC Transformation Order. On November 18, 2011, the Commission released the USF/ICC Transformation Order, which, among other things, established a number of new rules requiring carriers to adjust, over a period of years, many of their terminating switched access charges effective every July 1, as part of a transition to a bill-and-keep regime. The Commission capped the vast majority of interstate and intrastate switched access rates as of December 29, 2011. Price cap and rate-of-return carriers were required to make comparable reductions to certain intrastate switched access rates in 2012 and 2013 if specified criteria were met. Beginning in 2014, price cap and rate-of-return carriers begin a series of rate reductions to transition certain terminating interstate and intrastate switched access rates to bill-and-keep. The price cap transition occurs over six years and the rate-of-return transition over nine years.

5. The USF/ICC Transformation Order also re-emphasized the Commission's longstanding prohibition on call blocking. The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's communications network and that call blocking harms consumers. The Commission also made clear that the general prohibition on call blocking by carriers applies to VoIP-to-PSTN traffic. Finally, the Commission prohibited call blocking by

providers of interconnected VoIP services as well as providers of “one-way” VoIP services. The Communications Act defines “non-interconnected VoIP service” as a service that enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP service. 47 U.S.C. 153(36). Our use of the term “one-way VoIP” in this Order is consistent with the definition of “non-interconnected VoIP service” in the Communications Act, to the extent such service offers the capability to place calls to or receive calls from the PSTN.

6. In addition, the Commission adopted rules to address so-called “phantom traffic,” that is, traffic that terminating networks receive that lacks certain identifying information for calls. The lack of such basic information to accompany calls has also resulted in calls being delivered without the correct caller identification, which is a common call quality complaint in rural areas. In the USF/ICC Transformation Order, the Commission found that service providers in the call path were intentionally removing or altering identifying information to avoid paying the terminating rates that would apply if the call were accurately signaled and billed. The Commission adopted rules requiring telecommunications carriers and providers of interconnected VoIP service to include the calling party’s telephone number in all call signaling, and required intermediate providers to pass this signaling information, unaltered, to the next provider in a call path.

7. 2012 Declaratory Ruling. In 2012, the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission’s prohibition on blocking, choking, reducing, or restricting telephone traffic in response to continued complaints about rural call completion issues from rural associations, state utility commissions, and consumers. The 2012

Declaratory Ruling made clear that practices used for routing calls to rural areas that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in Section 201 of the Act or may violate the carriers' section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services. The 2012 Declaratory Ruling also noted that carriers may be subject to liability under section 217 of the Act for the actions of their agents or other persons acting for or employed by the carriers. The Bureau stated that the practices causing rural call completion problems "adversely affect the ubiquity and reliability of the nation's communications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network."

8. The NPRM. In February 2013, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on proposed reporting and data retention requirements. The NPRM proposed rules requiring facilities-based originating long-distance voice service providers to collect, retain, and report to the Commission data on call answer rates. The NPRM also proposed rules requiring facilities-based originating long-distance voice service providers to collect and retain information on call attempts and to periodically analyze call completion data and report the results to the Commission. The NPRM proposed rules requiring facilities-based originating long-distance providers with more than 100,000 retail long-distance subscribers (business or residential) to file quarterly reports that measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls were attempted during a calendar month, and to report on specific categories of call attempts. The NPRM also proposed requiring originating long-distance providers to measure the overall call answer rate for nonrural call attempts to permit comparisons between long-distance calls in rural versus nonrural local

exchanges.

9. Public Notice Seeking Comment on List of Rural OCNs. On April 18, 2013, the Wireline Competition Bureau released a Public Notice seeking comment on which rural OCNs covered providers should include in the proposed quarterly reports on call completion performance. The Public Notice invited comment on the completeness and suitability of a list of rural OCNs compiled by the National Exchange Carrier Association (NECA) and posted on NECA's web site.

10. Enforcement Activity. The Commission's Enforcement Bureau is also actively responding to rural call completion problems. In March 2013, Level 3 Communications, LLC (Level 3) entered into a consent decree terminating the Enforcement Bureau's investigations into possible violations of sections 201(b) and 202(a) of the Act with respect to Level 3's call completion practices to rural areas, including its use and monitoring of intermediate providers. On July 19, 2013, the Enforcement Bureau issued an advisory to long-distance providers to take consumer complaints about rural call completion seriously. The advisory gave examples of plainly insufficient provider responses and warned that "[g]oing forward, the FCC may take enforcement action against providers that submit such patently deficient responses to informal complaints."

11. In addition to conducting ongoing investigations of several long-distance providers, the Commission has been addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to customers of rural incumbent local exchange carriers (LECs) is promptly restored. We have established dedicated avenues for rural customers and carriers to inform the Commission about these call completion problems. A web-based

complaint intake focuses on the rural call completion problems of residential and business customers, instructs such customers how to file complaints with the Commission, and links to the Commission's standard 2000B complaint form. Separately, a dedicated email intake provides a "hot email line" for rural telephone companies to alert the Commission of systemic problems receiving calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.

12. Many key stakeholders acknowledge that call termination issues to rural service areas are serious and widespread and have collaborated to propose industry solutions. For example, in October 2011, stakeholders attended the Commission's Rural Call Completion Task Force's workshop to identify and discuss potential solutions. In 2012, the Alliance for Telecommunications Industry Solutions (ATIS) released the Intercarrier Call Completion/Call Termination Handbook outlining standards and practices of the industry relevant to ensuring call completion. In August 2013, ATIS and NECA announced a voluntary Joint National Call Testing Project offering providers the opportunity to test call completion issues identified on calls destined to many areas served by rural local exchange carriers. The testing project will facilitate cooperative trouble resolution efforts with originating, intermediate and terminating carriers. Finally, we note that some providers have devoted substantial time and resources to analyzing rural call completion performance. We applaud these and other efforts by stakeholders and encourage the continued support of the industry to undertake further efforts to diagnose problems in call routing, cooperate on finding solutions, and adopt best practices aimed at solving the rural call completion problem.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Autodialer Traffic

13. We seek additional comment on the ability of a covered provider to identify and segregate autodialer calls. It is unclear from the existing record whether autodialer, or mass-dialer, traffic can be reliably distinguished from regular traffic by covered providers. Two providers indicate that they can reasonably identify retail autodialer traffic because it is delivered on dedicated connections, whereas other commenters state that it is not possible to distinguish autodialer traffic. We seek comment on whether providers are able to isolate autodialer calls because of the way such traffic is delivered or otherwise. We also seek comment on the burdens of and benefits of distinguishing autodialer traffic.

14. We note that to the extent that terminating rural incumbent LECs report their own call answer rates, as we have encouraged them to do, those call answer rates will include autodialer traffic. In order for a terminating rural incumbent LEC's call answer rate to be a meaningful benchmark, the call data reported by covered providers must also include autodialer traffic. At the same time, as we have discussed, we recognize that autodialer traffic may skew call completion performance results, and that reports that segregate autodialer traffic may therefore be useful if such traffic can be reliably excluded. In the Order we permit covered providers to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. We seek comment on the proposal that all covered providers be required to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic, and on the relative benefits and burdens of doing so.

B. Intermediate Providers

15. In the Order, we decline at this time to impose the rules on intermediate providers. We seek comment on whether we should extend these rules to intermediate providers, or a subset thereof, and on the Commission's authority to do so. If we extended these rules to intermediate providers, could we reduce or eliminate the burden on originating providers?

16. We seek comment on whether we should impose certifications or other obligations on intermediate providers. For example, one commenter proposes intra-industry compliance certification as a supplement to the data collection, retention and reporting adopted in the Order. Should the Commission require each intermediate provider offering to deliver traffic for termination for another provider, or offering to deliver traffic for termination that is originated by an entity other than the end users it serves, to certify that it is terminating such traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements? Should each intermediate provider be required to obtain and file similar certifications from companies to which it is directing traffic for the purpose of terminating to the PSTN and to rural incumbent LECs in particular? Should we require intermediate providers to include in their rate decks a statement of the maximum number of intermediate providers they will use to deliver a call to a particular area? We seek comment on the proposal that it would be unlawful for any intermediate provider that refused to provide such a certification to carry traffic for termination on the PSTN, and it would be unlawful for any provider to direct such traffic to such a non-complying company.

C. Modifications to the Safe Harbor

17. In the Order, we adopt a safe harbor for qualifying providers, as noted above,

whose contracts with directly connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider before the call reaches the terminating provider. We seek comment on whether we should revise these requirements in the future.

18. For example, ATIS supports the safe harbor, but recommends that the Commission also consider whether there may be other measures carriers can take that should constitute safe harbors. Are there particular industry practices to manage call termination that should make providers eligible for a safe harbor from reporting and/or retention of records? Should the existing safe harbor be modified to include additional requirements in contracting with intermediate providers or other measures? If so, what should these triggers be and why? What should the obligations be? And, if the Commission revises or adopts different safe harbors, should the Commission relieve any of the data retention obligations?

19. We also seek comment on adopting a separate safe harbor related to a provider's call completion performance in specific OCNs. Specifically, we seek comment on whether a covered provider's record of matching or exceeding a rural incumbent LEC's reported terminating call answer rate in specific OCNs, or another threshold tied to the rural incumbent LEC's terminating call answer rate, could establish the foundation for a separate safe harbor for those OCNs? What would be an appropriate record of matching or exceeding a rural incumbent LEC's terminating call answer rate, and what would be an appropriate threshold in relation to that call answer rate?

20. In the Order that we adopt today, we decline to adopt a performance-based safe harbor (i.e., a safe harbor based on successful performance in completing rural calls as

demonstrated by a provider's data). As we note above, some commenters have suggested that the Commission should review data reported by the providers and then adopt some type of a performance-based safe harbor. What should the Commission take into consideration if it were to adopt standards for rural call performance? What other uses of the reported data would be useful and appropriate to eliminate the rural call completion problem?

D. Rural Incumbent Local Exchange Carriers

21. In the Order we encourage, but do not require, each rural ILEC to report quarterly on the number of incoming long-distance call attempts received, the number answered on its network, and the resultant call answer rate calculation. We noted that this information would be an important benchmark against which to evaluate the number of call attempts that originating providers report as having reached a rural ILEC's terminating switch or tandem, and the number that originating providers report as having been answered. Here we seek comment on whether the Commission should adopt or encourage a reporting methodology beyond what is described in the Order.

22. Should rural ILECs above a certain size be required to report their terminating call answer rate data, while those below the size threshold could continue to report on a voluntary basis? If reporting this information by rural ILECs were mandated, what would be the appropriate threshold, in terms of subscriber lines, revenues, or other measures? Would it be more efficient for a single report on rural ILEC call answer rates to be assembled by a third party organization (e.g., industry association), and how would that process function? For example, how would we select the organization, how would they obtain the data, and how we ensure the reliability of the report? Should we retain the same reporting timing and frequency as set for

voluntary reporting in the Order? If not, what should the reporting timing and frequency be? We also seek comment on the burdens and benefits associated with the type of rural ILEC reporting described above.

E. Additional Rule Changes

23. The Commission and the Wireline Competition Bureau have stated that no carriers, including interexchange carriers, or VoIP service providers may block, choke, reduce, or restrict traffic, including VoIP-PSTN traffic. The Order accompanying this FNPRM and the Wireline Competition Bureau's 2012 Declaratory Ruling make clear that carriers' and VoIP service providers' call routing practices that lead to call termination and call quality problems may violate this prohibition. Practices resulting in rural call completion problems adversely affect the ubiquity and reliability of the nation's telecommunications network and threaten the ability of consumers, businesses, and public health and safety officials to access and use a reliable network. For these reasons, we seek comment on whether we should adopt rules formally codifying existing prohibitions on blocking, choking, reducing, or restricting traffic. We also seek comment on whether there are any additional requirements that should apply to some or all of these providers or to any other entity, whether with respect to that entity's acts or omission that directly block, choke, reduce, or restrict traffic, governing its acts or omissions with respect to its intermediate providers, or that otherwise lead to rural call completion problems. To the extent that commenters advocate for additional requirements, commenters should explain why any such new requirements are needed; identify the specific categories of conduct that would be prohibited under the new requirements; and identify the specific sources of legal authority that would permit the Commission to adopt the new requirements. We also seek comment on whether we should provide additional guidance as to how existing or any new requirements

should apply to specific scenarios.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

24. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

25. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the

FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

27. The FNPRM seeks comment on a variety of issues relating to possible remedies for the problem of low call completion rates and poor overall call quality to rural America. As discussed in the FNPRM, the proposed rules will provide the Commission and providers with more data to identify and address problems of long-distance call completion to rural areas. The ubiquity and reliability of the nation's telecommunications network are of paramount importance to the Communications Act of 1934, as amended, and problems adversely affecting that ubiquity and reliability threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network. In order to confront these challenges, the FNPRM asks for comment in a number of specific areas.

1. Autodialer Traffic

28. The FNPRM first seeks comment on the ability of a covered provider to identify and segregate autodialer calls in order to further clarify whether autodialer, or mass-dialer, traffic can be reliably distinguished from regular traffic by covered providers. The FNPRM also seeks comment on whether providers are able to isolate autodialer calls because of the way such traffic is delivered or otherwise, and on the burdens of and benefits of distinguishing autodialer traffic. In addition, the FNPRM seeks comment on the proposal that all covered providers be required to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic, and on the relative

benefits and burdens of doing so.

2. Intermediate Providers

29. The FNPRM seeks comment on whether the Commission should extend the recording, retention, and reporting requirements adopted in the Order to intermediate providers, or a subset thereof, the Commission's authority to do so, and the benefits and burdens of doing so. The FNPRM also seeks comment on whether the Commission should impose certifications or other obligations on intermediate providers. The FNPRM asks whether each intermediate provider offering to deliver traffic for termination for another provider, or offering to deliver traffic for termination that is originated by an entity other than the end users it serves, should be required to certify that it is terminating such traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements. The FNPRM further asks whether each intermediate provider should be required to obtain and file similar certifications from companies to which it is directing traffic for the purpose of terminating to the PSTN and to rural telephone companies in particular. The FNPRM also asks whether the Commission should require intermediate providers to include in their rate decks a statement of the maximum number of intermediate providers they will use to deliver a call to a particular area. Finally, the FNPRM seeks comment on the proposals that it would be unlawful for any intermediate provider that refused to provide such a certification to carry traffic for termination on the PSTN, and that it would be unlawful for any provider to direct such traffic to such a non-complying company.

3. Modifications to the Safe Harbor

30. The FNPRM seeks comment on whether the Commission should revise, in the future, the requirements for the safe harbor for qualifying providers whose contracts with directly

connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider before the call reaches the terminating provider. The FNPRM seeks comment on whether there are particular industry practices to manage call termination that should make providers eligible for a safe harbor from reporting and/or retention of records. The FNPRM also asks whether the existing safe harbor should be modified to include additional requirements in contracting with intermediate providers or other measures and, if so, what these triggers should be and why, and what those obligations should be. In addition, the FNPRM asks whether, if the Commission revises or adopts different safe harbors, providers qualifying for the new or revised safe harbors should be relieved of any data retention obligations.

31. The FNPRM also seeks comment on adopting a separate safe harbor related to a provider's call completion performance in specific OCNs. Specifically, it seeks comment on whether a covered provider's record of matching or exceeding a rural incumbent LEC's reported terminating call answer rate in specific OCNs, or another threshold tied to the rural incumbent LEC's terminating call answer rate, could establish the foundation for a separate safe harbor for those OCNs. The FNPRM also asks what would be an appropriate record of matching or exceeding a rural incumbent LEC's terminating call answer rate and what would be an appropriate threshold in relation to that answer rate.

32. The FNPRM seeks comment on what the Commission should consider should it elect to adopt a performance-based safe harbor (i.e., a safe harbor based on successful performance in completing rural calls as demonstrated by a provider's data). Finally, the FNPRM seeks comment on what the Commission should take into consideration if it were to adopt standards for rural call performance and on what other uses of the reported data would be useful and

appropriate to eliminate the rural call completion problem.

4. Rural Incumbent Local Exchange Carriers

33. The FNPRM seeks comment on whether rural ILECs should be required to report their terminating call answer rate and whether the Commission should adopt or encourage a reporting methodology beyond what is described in the Order. The FNPRM asks whether, if the Commission adopts such a reporting scheme, rural ILECs above a certain size should be required to report their local call answer rate data while those below the size threshold could continue to report on a voluntary basis. The FNPRM seeks comment on what would be the appropriate threshold, in terms of subscriber lines, revenues, or other measures, whether it would be more efficient for a single report on rural ILEC call answer rates to be assembled by a third party organization, and how that process would function. The FNPRM asks how the Commission would select such a third-party organization, how that organization would obtain the data, and how the Commission could ensure the reliability of the reports. The FNPRM also asks whether rural ILECs should report with the same timing and frequency as set out for voluntary reporting in the Order and, if not, what the reporting timing and frequency should be. Finally, the FNPRM seeks comment on the burdens and benefits of rural ILEC reporting.

5. Additional Rule Changes

34. The FNPRM seeks comment on whether the Commission should adopt rules formally codifying existing prohibitions on blocking, choking, reducing, or restricting traffic. The FNPRM also seeks comment on whether there are any additional requirements that should apply to some or all of these providers or to any other entity, whether with respect to that entity's acts or omission that directly block, choke, reduce, or restrict traffic, governing its acts or omissions

with respect to its intermediate providers, or that otherwise lead to rural call completion problems. The FNPRM seeks comment on a number of related issues, including: why such new requirements are needed; identify the specific categories of conduct that would be prohibited under the new requirements; and identify the specific sources of legal authority that would permit the Commission to adopt the new requirements. The FNPRM also seeks comment on whether the Commission should provide additional guidance as to how existing or any new requirements should apply to specific scenarios.

B. Legal Basis

35. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

36. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

37. **Small Businesses.** Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

38. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

39. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

40. Incumbent Local Exchange Carriers (incumbent LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small

businesses that may be affected by rules adopted pursuant to the NPRM.

41. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

42. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.

Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service

Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

43. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

44. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.¹ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

45. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

46. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

47. Other Toll Carriers. Neither the Commission nor the SBA has developed a size

¹ *See id.*

standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

48. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless

telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

49. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

50. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the NPRM.

51. Cable Companies and Systems. The Commission has developed its own small

business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

52. All Other Telecommunications. The Census Bureau defines this industry as including "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for this category; that size standard is \$30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year. Of these, 2,478 establishments had annual receipts of under \$10 million and 145 establishments had annual receipts of \$10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance

Requirements for Small Entities

53. In the FNPRM, the Commission proposes to require covered providers to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

54. In the FNPRM, the Commission proposes to extend the recordkeeping, retention, and reporting requirements to intermediate providers, or some subset thereof. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

55. In the FNRPM, the Commission proposes to require intermediate providers to certify that they terminate long-distance traffic in accordance with all intercarrier compensation orders, tariffs, and agreements, and to prohibit intermediate carriers that fail to submit such certifications from carrying long-distance traffic. In addition, the proposal would prohibit other providers from handing off traffic to an intermediate provider that has failed to submit such certifications. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

56. In the FNPRM, the Commission also proposes to require rural ILECs to periodically report data for all long-distance calls terminating to their OCNs. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

57. We note parenthetically that, in the FNPRM, the Commission seeks comment on the benefits and burdens of these proposals.

E. Steps Taken to Minimize the Significant Economic Impact on Small

Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

59. The Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens. For this reason, the FNPRM proposes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

60. First, with regard to the proposal that covered providers file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic, only those covered providers with more than 100,000 retail long-distance subscriber lines (business or residential) would be required to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission.

61. Second, the FNPRM seeks comment on the proposal that the recordkeeping, retention, and reporting requirements adopted in the Order be extended to intermediate providers, and on whether doing so would allow the Commission to reduce or eliminate the burden on

covered providers.

62. Third, the FNPRM seeks comment on standards the Commission might use to adopt additional safe harbors in the future in order to reduce or eliminate any burdens associated with compliance with the recordkeeping, retention, and reporting obligations. The FNPRM proposes to adopt a safe harbor based on a provider's performance in completing long-distance calls to particular rural OCNs, measured against each rural OCNs local call answer rate.

63. Fourth, the FNPRM proposes to exempt smaller rural ILECs from the requirement that rural ILECs periodically report their local call answer rates to the Commission. Each of these proposals could reduce the economic impact on small entities.

64. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The proposed recordkeeping, retention, and reporting requirements in the FNPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the long distance industry.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

65. None.

VI. ORDERING CLAUSES

Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403, the Further Notice of Proposed Rulemaking IS ADOPTED.

IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), the Further Notice of Proposed Rulemaking comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**..

IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Further Notice of Proposed Rulemaking to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

